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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,982	03/01/2002	Kevin McCarthy	042933/302169	2223

826 7590 05/02/2007

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EXAMINER

HARBECK, TIMOTHY M

ART UNIT	PAPER NUMBER
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3692

MAIL DATE	DELIVERY MODE
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05/02/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/084,982	Applicant(s) MCCARTHY, KEVIN	
	Examiner Timothy M. Harbeck	Art Unit 3692	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over
Wiser et al (hereinafter Wiser, US 6,868,403 B1) in view of Olrik (US 2004/0092266
A1).

Re Claim 1: Wiser discloses a method of handling payment of downloadable content from a content provider to a terminal via a communication network said method comprises the steps of:

- Opening a software application in said terminal (FIG 1; Client System "Web Browser.")
- Requesting downloadable content from the open software application (Column 16, lines 30-39)
- Automatically starting up a network session (Column 16, lines 36-42)
- Transmitting in said network session a request for downloading said downloadable content for the software application (Column 16, lines 42-47),

- Receiving said downloadable content for the software application for pre-study (Column 2, lines 13-21)
- Handling of payment for said downloadable content for the software application for enabling storing of said downloadable content for the software application (Column 16, lines 48-64), and
- Storing of said downloadable content for the software application from which the downloadable content for the software application was requested (Column 10, lines 2-17)

Wiser does not explicitly disclose wherein the terminal is a wireless terminal. Olrik discloses a mobile telecommunications data service wherein a wireless terminal (mobile telephone) to be used as web browsers (0002), which are further utilized in downloading content (0057-0067). It would have been obvious to a person of ordinary skill in the art at the time of invention to include the teachings of Olrik to the disclosure of Wiser in order to use a wireless application protocol to provide data from a remote server to a mobile station.

Re Claim 2: Wiser in view of Olrik discloses the claimed method *supra* and Wiser further discloses wherein the requested downloadable content includes at least a graphic icon (Column 2, line 15 "graphics.").

Re Claim 3: Wiser in view of Olrik discloses the claimed method *supra* and Olrik further discloses wherein the networks session is a WAP session (Abstract)

Art Unit: 3692

Re Claim 4: Wiser in view of Olrik discloses the claimed method supra and Wiser discloses wherein the WAP session is established with a pre-identified content provider (Column 6, lines 17-38; FIG 1; Refs 128-122-112)

Re Claim 5: Wiser in view of Olrik discloses the claimed method supra and Wiser further discloses wherein the user of the wireless terminal has an account at the pre-identified content provider, and wherein the handling of payment for said downloadable content includes transfer of an amount from said account to the content provider upon approval by the user (Column 17 line 53-Column 18 line 6).

Re Claim 6: Wiser in view of Olrik discloses the claimed method supra and Wiser further discloses wherein the storing of said downloadable content is enabled once the user has approved said payment (Column 18, lines 7-20).

Re Claim 7: Wiser in view of Olrik discloses the claimed method supra and Wiser further discloses wherein the WAP session is established with a pre-identified Internet portal hosting at least one content provider (Column 6, lines 17-38; FIG 1; Refs 128-122-112)

Re Claim 8: Wiser in view of Olrik discloses the claimed method supra and Wiser further discloses wherein the user of the wireless terminal has an account at the pre-identified Internet portal, and wherein the handling of payment for said downloadable content includes transfer of an amount from said account to the content provider upon approval by the user (Column 17 line 53-Column 18 line 6).

Re Claim 9: Wisner in view of Orlik discloses the claimed method *supra* and Wisner further discloses wherein the storing of said downloadable content is enabled once the user has approved said payment (Column 6, lines 40-42)

Re Claims 10-13: Further wireless terminal claims would have been obvious from the previously rejected method claims 1-4, respectively, and are therefore rejected using the same art and rationale.

Response to Arguments

Applicant's arguments filed 2/12/2007 have been fully considered but they are not persuasive.

The applicant's sole argument at the present time is that the Orlik reference (US 2004/0092266) is disqualified as prior art, because it was commonly owned, by the assignee of the present invention, at the time of the present invention. The examiner believes that this is not true.

First it is submitted that the proper 102(e) date of the Orlik reference is the international filing date (July 25, 2001). The examiner references MPEP Section 706.02(f)(1), specifically the flowchart for establishing 102(e) dates. Beginning at the top, Orlik is a US application publication of an International Application. Continuing down the chart; the IA **was** filed on or after November 29, 2000. Continuing, the WIPO publication of the IA **was** in English and **did** designate the US (This document can be found on the record, in the IDS filed 10/17/2003). From there it is determined that the proper 102(e) date is the international filing date of July 25, 2001.

Art Unit: 3692

With this established it is now proper to look at the dates of assignment of the case. According to records and the applicant the assignment of the Orlik reference was recorded on 06/04/2003. The present invention was assigned on March 1, 2002. Therefore at the time of the present invention (March 1, 2002), the Orlik reference was not commonly owned (this did not occur until 15 months after the present invention).

Furthermore the examiner notes that the WIPO publication of Orlik is on the record as having an international publication date of February 21, 2002 and the aforementioned international filing date of July 25, 2001.

It is thus submitted that the Orlik reference in question, does qualify as prior art under 102(e) and the rejection is therefore maintained.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy M. Harbeck whose telephone number is 571-272-8123. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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SUPERVISORY PATENT EXAMINER